

Agenda

Item #6



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: January 10, 2013
Re: Information for the January 17, 2013 Hearing

This memo provides background information for the Commission's January 17, 2013 hearing on financial activities to support Michael Nadeau for the Maine House of Representatives in District 1. In the November 6, 2012 general election, Mr. Nadeau defeated the incumbent, John L. Martin. Please note that although the initial complaint related to a mailing to support Mr. Nadeau, the staff's investigation since your last meeting has examined other paid communications, including an advertisement in a weekly newspaper (discussed on pages 4-5 below).

Request for Investigation

Mailing, and Report of Independent Expenditure

Around Thursday, November 1, 2012, a mailing was sent to voters in House District #1 that promoted Mr. Nadeau and criticized Rep. Martin. A copy is attached. At least three individuals had some involvement in the mailing: James Majka ("MI'-kah"), Dana Saucier, and Philip Soucy. On Friday, November 2, the Commission received a report of an independent expenditure for the mailing (attached). Mr. Soucy signed the report. The person making the expenditure was identified in the report as Citizens for Effective Government, L. Philip Soucy, Treasurer. The cost of the mailing was \$1,475.16, according to the report. The Commission assigned the report an index number of 205. (Mr. Soucy later told me in an interview that Dana Saucier helped him enter the information on the report, because Mr. Soucy has trouble with printing by hand.)

Within the report, Mr. Soucy signed a form affidavit stating that he made the expenditure “not in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate, authorized committee or agent of a candidate” This was a problem because Mr. Soucy *was the campaign treasurer for Michael Nadeau’s campaign.* (see attached registration form) Although Mr. Soucy described himself to the Commission as a treasurer “in name only,” he did sign campaign finance reports submitted by the campaign on paper, thus certifying that the reports were true, accurate, and complete. The Commission staff views Mr. Soucy as part of Mr. Nadeau’s authorized political committee and an agent for the candidate and committee. So, it is difficult to see how the expenditure was not made in cooperation with the candidate’s campaign committee or agents.

Filing of Complaint

At 6:59 p.m. on Friday, November 2, 2012, counsel for the Maine Democratic Party, Kate R. Knox, Esq., filed a request for investigation with the Ethics Commission by electronic mail. (attached) The Maine Democratic Party contended that Mr. Nadeau had received a contribution because his treasurer – an agent of the campaign – cooperated with the expenditure:

As Treasurer of Mr. Nadeau’s campaign – he is clearly an “agent” of the campaign and as such, is prohibited from coordinating with any outside organization on expenditures (let alone an organization he controls). As a result, the \$1,475.16 expenditure made by [Citizens for Effective Government] to support Candidate Nadeau is an illegal contribution to the campaign.

(Knox letter, at 2) As a Maine Clean Election Act candidate, Mr. Nadeau is not permitted to accept campaign contributions.

Notice to Mr. Nadeau and Mr. Soucy of Complaint

Assistant Director Paul Lavin received the complaint the evening of Friday, November 2, 2012. In the next 90 minutes, he spoke separately with Michael Nadeau and Philip Soucy by telephone about the complaint. He transmitted a pdf of the complaint to both of them by electronic mail at 8:35 p.m. Mr. Lavin used an e-mail address specified by Mr.

Nadeau. Mr. Lavin's e-mail stated that "There is a high probability that the Commission will hear the [Maine Democratic Party's] request Monday afternoon."

On the morning of Saturday, November 3, 2012, the Commission Chair, Walter F. McKee, authorized the Commission to meet on the complaint and directed me to gather preliminary factual information over the weekend.

I called Mr. Soucy on Saturday, November 3 and he consented to answer my questions. Some of his responses on November 3 were contradicted by his comments at the November 5 meeting – particularly concerning the source of the funds for the mailing. (Those discrepancies are described below).

Following my interview of Philip Soucy, I left a voicemail message for candidate Michael Nadeau on his cell phone number, inviting him to call me at the Commission office on Sunday, November 4. I did not hear back from him on November 3 or 4. I spoke with Mr. Nadeau by phone on the morning of November 5 and attempted to notify him of the meeting, but the phone connection was poor.

November 5, 2012 Meeting and Determination

The Commission met at 3:00 p.m. on Monday, November 5, 2012 (the day before the election). Mr. Soucy provided information by telephone in response to questions from the Commission members and staff. At the meeting, the Commission considered presentations by William P. Logan, Esq., attorney for Mr. Soucy, and Ms. Knox, attorney for the Maine Democratic Party. Mr. Nadeau did not participate in the meeting.

One of the topics discussed at the meeting was the source of funds for the mailing. Philip Soucy said that his group received three contributions of \$500 in cash from Norman Nadeau, Kenneth Nadeau, and Ronaldo Thibeault. When asked if the contributors were related to the candidate, he said that he did not know.¹ He said that he put the cash in his

¹ Norman Nadeau is a brother of the candidate. Ronaldo Thibeault is the candidate's stepfather. Kenneth Nadeau was also a brother of the candidate, but he died on November 10, 2012.

safe. He paid for the mailing with a personal credit card. There was now only around \$25 left in the safe. This explanation offered by Mr. Soucy of the source of cash for the mailing directly contradicted the information he provided me by telephone on November 3, 2012, in which he said that the money came from small donors of less than \$100 and possibly personal funds of Dana Saucier and James Majka. In the November 3 interview, he denied that the money came from any other source. When asked about the discrepancy between his responses on November 3 and 5, he replied that on November 3 he had been interrogated without an attorney. The minutes for the meeting are attached.

At the meeting, the Commissioners found unanimously that:

- (1) there was a coordinated expenditure under Title 21-A, section 1015(5) as a result of the involvement of treasurer L. Philip Soucy in the Mike Nadeau campaign and the Citizens for Effective Government, and
- (2) as a result of the coordinated expenditure, there was a campaign contribution to the Mike Nadeau campaign which is not allowed under the Maine Clean Election Act.

In addition, the Commission directed its staff to commence an investigation regarding 1) the factual issues concerning the coordinated expenditure, 2) whether the Citizens for Effective Government should have registered as a political action committee, and 3) the issues raised by the sworn statement by L. Phillip Soucy that there was no coordination between the Mike Nadeau campaign and the Citizens for Effective Government regarding the expenditure for the communication.

On November 5, 2012, the Commission staff prepared a written determination (attached).

Newspaper Advertisement Purchased by James Majka

Following the determination, the Commission staff telephoned the local newspapers to verify that all spending to influence the District 1 race had been reported. The Fiddlehead Focus, a weekly newspaper based in Fort Kent, disclosed that James Majka had purchased a half-page advertisement for the October 31 edition of the newspaper (see attached image of the ad). The cost of the newspaper ad was \$420. Mr. Majka paid

in cash and has told staff that he did so with his own personal funds. The ad does not contain the required statement whether the communication was authorized by the candidate. No independent expenditure report was filed with the Commission concerning this advertisement, nor was it listed in any candidate campaign finance report.

I interviewed James Majka on November 15. He explained that he volunteered for the campaign because Michael Nadeau is his friend. In addition, he provided website services to the campaign for which he was paid \$350 under the business name of 21st Century Media. Mr. Majka was reluctant to attend your December 19 hearing. The Commission Chair authorized the use of a subpoena to require his attendance at the hearing.

Notice of Hearing

The Commission staff recommended, and the Commission Chair agreed, that the Commission's investigation should include sworn testimony at a hearing. The hearing was originally scheduled for the December 19, 2012 meeting, but was rescheduled for January 17, 2013 due to weather.

Compliance Issues

As indicated in the notice of hearing, the topics or issues to be addressed at the hearing include:

- (1) whether the Michael Nadeau campaign should be found in violation of the Maine Clean Election Act for receiving a contribution in the form of a coordinated expenditure by the group known as Citizens for Effective Government;
- (2) whether a penalty should be imposed on the candidate or the treasurer for receiving a contribution;
- (3) whether Mr. Soucy made a material false statement in the affidavit filed with Independent Expenditure Report #205;
- (4) whether Citizens for Effective Government made expenditures in excess of \$1,500 for the purpose of influencing the nomination or election of any candidate, thereby triggering an obligation to register and to file a campaign finance report as a political action committee; and

- (5) whether the expenditure by James Majka for the newspaper ad should have been reported as an independent expenditure or whether it should be considered a contribution to Mr. Nadeau.

Legal Counsel

Attorneys have been engaged by two respondents

- Timothy C. Woodcock of Eaton Peabody, for Michael Nadeau
- William P. Logan of Irwin Tardy & Morris, for Philip Soucy.

Witnesses

At the January 17, 2013 meeting, the staff expects that you will receive testimony from:

- Julie Daigle, employee of Fiddlehead Focus newspaper
- Dennis Michaud, employee of Fiddlehead Focus newspaper
- James Majka
- Dana Saucier
- Philip Soucy
- Hon. A. Michael Nadeau.

Exhibits

Relevant documents from the Commission's files will be numbered as exhibits and will be offered into evidence at the hearing. Staff will ask counsel for both Mr. Soucy and Mr. Nadeau to identify any documents that they wish to offer as exhibits, so that we can provide you with one numbered set at the hearing.

Thank you for your consideration of this memorandum.

The People of Maine House District 1
Are Endorsing Candidate

Mike Nadeau

People - Not Politics | Results - Not Just Talk | Serving Mainers - Not Making It a Career.

6775

Facts are Stubborn Things...

John Martin Voted NO 66% of the time against support for Private Sector Jobs and Maine's Economy (source: MERI.org)

According to The People's Report Card of how our legislators voted with the people of Maine, John Martin voted only 15% of the time for the people. (source: mainepeoplebeforepolitics.com/reportcard/)

John Martin was fine with tax cuts for the wealthy when he could raise taxes on working Maine families to make up the difference, but now he opposes tax cuts for everyone that he voted for because he wants to be re-elected. This is not leadership, it is shameful political grandstanding.

LD1333 - Maine's recent health insurance reform has resulted in the smallest increase in health insurance rates in recent memory. While there were some geographical challenges in the initial 2011 reform, lawmakers will return to the law in 2013, ensuring residents in Aroostook County will not be adversely impacted. John Martin and his allies do not want you to know this.

Clean Elections? If anyone should not be complaining about reforms that make our "clean elections" system constitutional after the US Supreme Court ruling, it is John Martin. After a group recently revealed that John Martin pumped \$8,500 of his "clean elections" taxpayer dollars into his own business, Bald Eagle, John Martin owes the people of District 1 an explanation, instead of looking for a shoulder to cry on. Haven't we had enough of this?

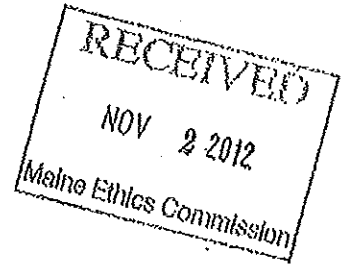
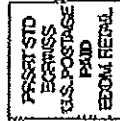
On November 6th, it's time to make a change.

Mike Nadeau fixes things for a living. He will take your voice to Augusta and begin fixing things on day one.

Vote the *PERSON*, not the *PARTY* - Mike will get the job done right.

mikenadeau.net

Make sure you have the facts when you enter the voting booth on Tuesday, Nov. 6th

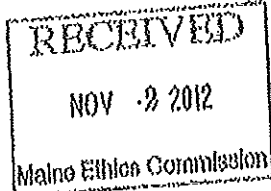


*****ECRWSSDDM*****
Postal Customer
Fort Kent, Maine 04743

Citizens for Effective Government
PO Box 135
Fort Kent, Maine 04743

NOT PAID FOR BY OR AUTHORIZED BY ANY CANDIDATE
CITIZENS FOR EFFECTIVE GOVERNMENT

ATTACHMENT #1



COMM

IE #205

2012 GENERAL ELECTION

INDEPENDENT EXPENDITURE REPORT - 2012 GENERAL ELECTION

Name of Person/Committee Making Expenditure(s) L. Philip Soucy, Treasurer Citizens For Effective Government

Mailing Address 31 Pinkham Ave, P.O. Box 185

City, Zip Code Farmington, ME 04742 Telephone 207-854-3777

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules. Reports must be filed on a weekend or holiday if that is when they are due by faxing the report to the Commission (207-6776). The Commission must receive the signed original report within 5 days after the fax was received.

☐ Check here if this report is an amendment to a previously filed report? Date of original report: _____

INDEPENDENT EXPENDITURES OVER \$250 MADE FROM SEPTEMBER 7 THROUGH OCTOBER 23, 2012

☒ Independent expenditures made from September 7 through October 23, 2012 that total more than \$250 per candidate must be reported within 2 calendar days of making the expenditure.

☐ Report of Independent Expenditure over \$250 per Candidate

INDEPENDENT EXPENDITURES OVER \$100 MADE AFTER OCTOBER 23, 2012

☒ Independent expenditures made after October 23, 2012 that total more than \$100 per candidate must be reported within one calendar day of making the expenditure.

☒ Report of Independent Expenditure over \$100 per Candidate

OTHER INDEPENDENT EXPENDITURES (SELECT ONE REPORT BELOW)

| Report (select one) | Due Date | What Gets Reported |
|---|--------------------------------|--|
| <input type="checkbox"/> 60-Day Pre-Election Report | September 7, 2012 by 5:00 p.m. | Expenditures totaling more than \$100 per candidate made on or before September 6, 2012 |
| <input type="checkbox"/> 11-Day Pre-Election Report | October 26, 2012 by 5:00 p.m. | Expenditures totaling more than \$100 but not more than \$250 made from September 7 through October 23, 2012 |

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

L. Philip Soucy
Signature of PAC or Party Treasurer, or
Other Authorized Person Making Expenditure(s)

November 1, 2012
Date



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333
Office: 46 Memorial Circle, Augusta, Maine

Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6776

INDEPENDENT EXPENDITURE REPORT - 2012 GENERAL ELECTION

AFFIDAVIT

STATE OF Maine

COUNTY OF Androscoggin

I, L. Philip Sorey, being duly sworn, attest that I made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate, authorized committee or agent of a candidate in a race affected by any expenditure listed in this report.

L. Philip Sorey
Signature of Affiant

Sworn to before me, this 2nd day of November, 2012

Cindy Bouley
(Notary Public/Attorney at Law)

My commission expires:

CINDY BOULEY
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES AUGUST 2, 2012

Independent Expenditure Report - 2012 General Election

Page of
(Schedule B-IE-1 only)

Schedule B-IE-1

CANDIDATE(S) SUPPORTED/OPPOSED

- Please list all candidates that were the subjects of independent expenditures.
- If more than one candidate was the subject of the expenditure, allocate the expenditure among the candidates.

| Office sought by candidate (including district # or county) | Candidate's name | Indicate whether expenditure was made in support of or in opposition to the candidate | Amount expended this reporting period for each candidate |
|--|-------------------------|---|--|
| State Representative District # 1 | Allen, Michael Napoleon | Support of | \$1,475.16 |
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| | | | |
| Total expenditures for all candidates this reporting period. This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C. ⇒ | | | 0 |

Independent Expenditure Report - 2012 General Election

Page _____ of _____
(Schedule B-IE-2 only)

Schedule B-IE-2

PAYMENTS AND OBLIGATIONS

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the expenditure type.

| Expenditure Types | | | | |
|-------------------|--|-----|--|--|
| ✓ LIT | Printing and graphics (flyers, signs, postcards, etc.) | PRT | Print media ads only (newspapers, magazines) | |
| ✓ MHQ | Mall house (all services purchased) | RAD | Radio ads, production costs | |
| ✓ PHO | Phone banks, automated telephone calls | TVN | TV or cable ads, production costs | |
| ✓ POI | Polling and research survey | WEB | Website design, registration, hosting, maintenance, etc. | |
| ✓ POS | Postage for U.S. Mail and mail box fees | OTH | Other (include description) | |

| Date of expenditure | Payee, address, zip code | Expenditure type | ✓ | Amount |
|--|---|------------------|---|------------|
| 11/1/12 | PAPER, SIGN, INK 128 W. MAIN SUITE 101 FORT LENT, MO. 64243 | LIT POS | | 1,475.66 |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| A. Expenditures for this page => | | | | 0 1,475.66 |
| B. Total for all other Schedule B-IE-2 pages (if any) => | | | | 0 - |
| C. Total independent expenditures for this reporting period (A+B). This amount should equal the total amount for all candidates listed on Schedule B-IE-1. => | | | | 0 1,475.66 |

Independent Expenditure Report - 2012 General Election

Page 1 of 1
(Schedule B-E.3 only)

Schedule B-E-3

EXPENDITURE DETAILS

- If you file an independent expenditure report after October 20, 2012 for the General Election, you must provide the following information.

| | |
|---|---|
| 1. The date on which the person making the expenditure placed the order with the vendor for the goods or services | October 31, 2012 |
| 2. The approximate date when the vendor began providing design or any other services in connection with the expenditure | November 1, 2012 |
| 3. The date on which the person making the expenditure first learned of the total amount of the expenditure | November 1, 2012 |
| 4. A statement why the expenditure could not be reported by the eighth day before the election | Final effort before election day, Nov 6th, to reach voters throughout the district. |

2012 Election Year



MAR 14 2012

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
 Mail: 135 State House Station, Augusta, Maine 04333
 Office: 45 Memorial Circle, Augusta, Maine

Website: www.maine.gov/ethics
 Phone: 207-287-4179
 Fax: 207-287-6775

2012 CANDIDATE REGISTRATION

Notice: Changes to registration information must be filed within 10 days in writing or by e-mail to the Commission.

Is this an amendment? ☐ Yes ☒ No

CANDIDATE INFORMATION

| | | | | |
|---|--|---|--|---|
| Are you running as a (check one): | | | <input checked="" type="checkbox"/> Maine Clean Election Act candidate | <input type="checkbox"/> traditionally financed candidate |
| Title <input type="checkbox"/> Ms. <input type="checkbox"/> Mrs. <input checked="" type="checkbox"/> Mr. <input type="checkbox"/> Dr. <input type="checkbox"/> Honorable | | Party affiliation <i>Republican</i> | | Office sought <i>Representative</i> |
| Name: First <i>Allen</i> | | MI or Middle Name <i>Michael</i> | | Last <i>Nadeau</i> |
| Mailing address <i>545 Caribou Road</i> | | District or County <i>District 1</i> | | |
| City, zip code <i>Fort Kent, Maine</i> | | Home Phone <i>207 231-1201</i> | | |
| E-mail <i>502 nadeau@gmail.com</i> | | Fax <i>207-834-2272</i> | | Cell Phone <i>207 231-1202</i> |
| | | | | Work Phone <i>207 834-6310</i> |

TREASURER INFORMATION

| | | | | | |
|---|--|--|--|----------------------|-------------------------------------|
| Name: First <i>L. Philip</i> | | MI or Middle Name <i>Soucy</i> | | Last <i>Soucy</i> | Phone (home) <i>207-834-5011</i> |
| Mailing address <i>31 Pinkham Ave</i> | | | | | Phone (work) |
| City, zip code <i>Fort Kent ME 04743</i> | | E-mail <i>Louispsoucy@yahoo.com</i> | | Fax | |

DESIGNATION OF TREASURER: A candidate for office must appoint a treasurer no later than 10 days after becoming a candidate, and before accepting contributions, making expenditures or incurring obligations. No later than 10 days after appointing a treasurer, the candidate must register with the Commission the name and address of the candidate and treasurer. The treasurer is responsible for maintaining campaign records and for filing reports. A MCEA candidate may serve as treasurer for no more than 14 days following the date of registration. (21-A MRSA §§ 1013-A and 1125(12-A))

DEPUTY TREASURER INFORMATION

| | | | | | |
|-----------------|--|-------------------|--|------|--------------|
| Name: First | | MI or Middle Name | | Last | Phone (home) |
| Mailing address | | | | | Phone (work) |
| City, zip code | | | | | E-mail |

DESIGNATION OF DEPUTY TREASURER (optional): The candidate may appoint a deputy treasurer and notify the Commission no later than 10 days after the appointment. The deputy, when acting in the absence of the treasurer, has the same powers and responsibilities as the treasurer. A MCEA candidate may serve as deputy treasurer for no more than 14 days following the date of registration. (21-A MRSA §§ 1013-A and 1125(12-A)) (21-A MRSA § 1013-A (1)(A)(1))

| 3. AUTHORIZED AGENT INFORMATION | | |
|---------------------------------|-------|-------|
| Name | Phone | Email |
| Name | Phone | Email |

DESIGNATION OF AUTHORIZED AGENT (optional): Please use this section to designate individuals, other than the treasurer and deputy treasurer, authorized to file reports on your behalf.

| 4. POLITICAL COMMITTEE INFORMATION | |
|------------------------------------|----------------|
| Name | Phone |
| Address of campaign headquarters | City, zip code |

DESIGNATION OF POLITICAL COMMITTEE (optional): The candidate may form a political or campaign committee. Within 10 days of forming the committee and before accepting contributions, making expenditures or incurring obligations, the candidate must:

- appoint a treasurer (the candidate may have only one treasurer who is listed in Section 2) and
- register the committee and its officers, if any are appointed, with the Commission. (21-A MRSA § 1013-A (1) (B))

Committee Officers (use additional pages, if necessary):

| | | |
|-----------------|----------------|--------|
| Name | Title | Phone |
| Mailing address | City, zip code | E-mail |

| | | |
|-----------------|----------------|--------|
| Name | Title | Phone |
| Mailing address | City, zip code | E-mail |

| 5. CERTIFICATION | |
|--|---------------------|
| I, <u>Allen Michael Nadeau</u> , certify that the information in this registration is true, (Print Candidate's Full Name) | |
| accurate and complete. | |
| Signature of Candidate <u>Allen Michael Nadeau</u> | Date <u>3-12-12</u> |

| 6. FOR COUNTY CANDIDATES ONLY | |
|---|--|
| <p>REPORTING EXEMPTION REQUEST: A candidate for county office may request an exemption from the obligation to appoint a treasurer and file campaign finance reports if the candidate does not accept any cash or in-kind contributions or make any expenditures for his or her campaign. You cannot request a reporting exemption if you use your or your spouse's/domestic partner's personal funds to pay for your campaign expenses. To request an exemption, complete the statement below and sections 1 & 5, have the form notarized, and submit it to the Commission.</p> <p>STATEMENT OF ELIGIBILITY FOR A REPORTING EXEMPTION: I, the undersigned, swear or affirm that I will not accept contributions, make expenditures or incur obligations associated with my candidacy.</p> <p>Signature of county candidate _____ Date _____</p> <p>Subscribed and sworn (affirmed) to before me this _____ day of _____, 20____.</p> <p>Signature of Notary/Attorney-at-law _____ My commission expires _____ (Seal is optional) (Date)</p> <p>REVOCATION NOTICE: The foregoing statement may be revoked. Prior to revocation, the candidate must appoint a treasurer. A revocation notice must be in the form of an amended registration which must be filed with the Commission no later than 10 days after the date the treasurer is appointed. The notice must be filed before contributions are accepted or expenditures made. A late revocation notice is subject to the same penalties applicable to late campaign finance reports.</p> | |

BERNSTEIN SHUR
COUNSELORS AT LAW

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207 774-1127 fax
bernshur.com

100 Middle Street
PO Box 8729
Portland, ME 04104-5029

Kate R. Knox
207 228-7229 direct
kknox@bernshur.com

VIA EMAIL

November 2, 2012

Jonathan Wayne
Executive Director
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

Re: REQUEST FOR INVESTIGATION

Dear Mr. Wayne:

Pursuant to Maine Commission on Governmental Ethics and Election Practices Rule 94-270 C.M.R. ch. 1, § 4(2)(C), the Maine Democratic Party (the "Party") hereby requests an investigation into the propriety of Independent Expenditures made by Citizens for Effective Government in House District 1. A review of publicly filed campaign finance reports and Independent Expenditure #205 provide sufficient grounds for believing that the organization has made, and Candidate has accepted, a prohibited campaign contribution. 21-A M.R.S.A. §1003(2).

FACTS

Citizens for Effective Government ("CEG") filed an Independent Expenditure report with the Ethics Commission on November 1, 2012. CEG is not a registered PAC and information about its organizational structure is not available.¹ The Independent Expenditure Report at issue ("IE #205") does list "L. Phillip Soucy, Treasurer." (See Attachment #1)

L. Phillip Soucy is also listed as the Treasurer for candidate Allen Nadeau running for House District #1. Candidate Nadeau is certified as a Maine Clean Election Candidate. (See Attachment #2)

On November 1, 2012, CEG designed and mailed literature in support of Candidate Nadeau. The Party contends that IE #205 which discloses that expenditure shows illegal and prohibited coordination between CEG and Candidate Nadeau's campaign. In sum, the fact that L. Phillip Soucy is the Treasurer of both CEG and Candidate Nadeau's campaign violates several provisions of election law, and has resulted in a prohibited contribution to Candidate Nadeau's campaign by CEG.

November 2, 2012

Page 2 of 2

Candidates who choose to be certified as Maine Clean Election Act candidates agree not to accept any contributions from any individual or organization, 21-A M.R.S.A. §1125(6). As a result, individuals or organizations are limited in their ability to make direct expenditures on behalf of MCEA candidates. They can, however, make "independent expenditures" ("IE's") to support or oppose candidates, *as long as those expenditures are made independently without any direct involvement with the candidate or the candidate's agents.*

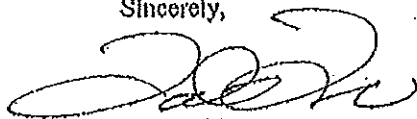
In order for expenditure to qualify as "independent" – an organization must make a communication which expressly advocates for an identified candidate without coordinating that expenditure with candidates or their agents who may benefit from the communication. "Coordination" is defined as an organization making an expenditure in cooperation, consultation or in concert with a candidate or a candidate's agent. Maine Commission on Governmental Ethics and Election Practices Rule 94-270 C.M.R., ch 1 §6(9). The Commission Rule on Coordination states that expenditure is presumed to be prohibited coordination when "the expenditure is made in cooperation, consultation or in concert with any person, who, during the twelve months preceding the expenditure, *has been the candidate's treasurer....*" (emphasis added).

In this instance, the Party contends that Mr. Soucy, by virtue of his role as Treasurer in both organizations, has clearly and blatantly coordinated IE #205 with Mr. Nadeau's campaign. As Treasurer of Mr. Nadeau's campaign – he is clearly an "agent" of the campaign and as such, is prohibited from coordinating with any outside organization on expenditures (let alone an organization he controls). As a result, the \$1,475.16 expenditure made by CEG to support Candidate Nadeau is an illegal contribution to the campaign.¹

The Party argues that these actions are serious and constitute a major violation of campaign finance law. Participating candidates agree to abide by strict contribution limits in exchange for public financing. They should not be allowed to circumvent the system by coordinating with outside groups or individuals who wish to supplement those funds with private expenditures.

Due to the serious nature of these allegations and the closeness of the election, the Party requests that the Commission hear this matter as soon as possible. When assessing the actions of both CEG and Treasurer Soucy, we urge consideration of both civil and criminal sanctions.

Sincerely,



Kate R. Knox

¹ The Party would also ask the Commission to inquire whether or not CEG should have registered as a PAC as required under 21-A M.R.S.A. §1052(5).

² Astonishingly, as part of IE #205, Mr. Soucy signed an affidavit swearing that he had not coordinated the expenditure with the candidate or any candidate's agent. Mr. Soucy appears to forget that he himself is an agent of the campaign.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Approved on: 12/19/2012

Minutes of the November 5, 2012, Special Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
Augusta, Maine

Present: Walter F. McKee, Esq., Chair; André G. Duchette, Esq.; Margaret E. Matheson, Esq.; Michael T. Healy, Esq.; Hon. Jane A. Amero
Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel

At 9:05 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Request for Investigation of Candidate Michael Nadeau and Citizens for Effective Government

The Maine Democratic Party contends that candidate Allen Michael ("Mike") Nadeau of Fort Kent, who is running for the Maine House of Representatives (District 1) as a Maine Clean Election Act (MCEA) candidate, has accepted a contribution which is prohibited for MCEA candidates. The basis for the allegation is that Philip Soucy, who is Mr. Nadeau's campaign treasurer, coordinated with an organization to make an expenditure for a mailing in support of Mr. Nadeau costing \$1,475.16. The organization is called Citizens for Effective Government. Mr. Wayne explained that Mr. Soucy signed and filed an independent expenditure report on behalf of the Citizens for Effective Government on November 2 disclosing the expenditure for the mailing. The independent expenditure report contained a notarized affidavit signed by Mr. Soucy stating that the expenditure was made without cooperation or consultation with the candidate, candidate's committee or agent of the candidate. The Maine Democratic Party contends that since Mr. Soucy is both Mr. Nadeau's campaign treasurer and the treasurer for the group making the expenditure, the expenditure for the mailing cannot be an independent expenditure under Maine's campaign finance law and is, therefore, an in-kind contribution to Mr. Nadeau. MCEA candidates, such as Mr. Nadeau, are not permitted to accept contributions after being certified for the program.

Kate R. Knox, Esq., representing the Maine Democratic Party (MDP), said this complaint is relatively straight forward. As treasurer for a group called Citizens for Effective Government, Mr. Soucy filed an independent expenditure report for an expenditure made to support Mike Nadeau's campaign. Mr. Soucy is also serving as the treasurer for Mr. Nadeau's campaign. Ms. Knox said the MDP considers this a clear violation of the cooperation rule which says that a candidate, candidate's committee or candidate's agent may not cooperate or coordinate with a third party on making an expenditure. If there is coordination between the spender and the candidate, candidate's committee or the candidate's agent, the expenditure is considered an in-kind contribution which Clean Election candidates are not allowed to accept. She said it is clear from the paperwork that Mr. Soucy is the treasurer of the group that made the expenditure and the treasurer of the candidate's committee which puts him on both sides of the fence. It is clear that an expenditure cannot be independent of the candidate under this circumstance. Ms. Knox said there have been several attempts to contact Mr. Nadeau by the Commission staff but Mr. Soucy is the person to whom the Commission should be directing its questions since he made the expenditure. She said whether Mr. Nadeau knew about the expenditure is irrelevant to the finding of violation in this case. Due to the delicate timing with respect to election tomorrow, she stressed the importance for the Commission to find that a violation has occurred and perhaps hold off on assessing the penalty until after the election.

Mr. Healy asked Ms. Knox to explain who she thought should be found in violation.

Ms. Knox said there are potentially several violations. The MDP's request relates to the candidate's committee, she said, and finding Mr. Nadeau's campaign committee in violation because Mr. Soucy is an agent of his campaign.

Mr. Healy asked Ms. Knox whether the committee would be assessed the penalty and pay the fine, if the candidate's committee is found in violation,

Ms. Knox agreed with that assessment. She said there are outstanding questions about Citizens for Effective Government because they are not a registered PAC and whether the group did stay under the \$1,500 threshold for PAC registration. The lack of information about this PAC and the people involved is troublesome, she said.

Mr. McKee said it appears Mr. Soucy was alone in the expenditure because he signed the affidavit stating he did it independently and did not coordinate with the Nadeau campaign.

Mr. Healy said there is enough evidence to presume a violation; however, not being able to hear from Mr. Nadeau makes the decision more difficult.

Ms. Knox said Mr. Nadeau did speak with Assistant Director Paul Lavin so he was alerted to the issue. She said it is troubling that he has not responded at all despite knowing that an allegation has been made against his campaign treasurer and that a meeting would be taking place today. She said she understood the concern, however, she urged the Commission not to defer finding a violation simply because the candidate avoids making a response in hopes the Commission will not take action.

William P. Logan, Esq., representing Philip Soucy, explained that Mr. Soucy agreed to be the treasurer for Mr. Nadeau's campaign with the understanding that Mr. Soucy would not actively be involved as the campaign treasurer. As the Commission may know, treasurers may have varying levels of participation in candidates' campaigns. In this case, Mr. Nadeau ran his own campaign and filed his own reports. Mr. Soucy did not perform any duties as a treasurer, did not have an active role in the campaign, and has never been a campaign treasurer before. Mr. Soucy did not intend for the mailer to be in coordination with the campaign and did not communicate with Mr. Nadeau about the mailer. He said the Citizens for Effective Government is an informal group of individuals who wanted to support the election of Mr. Nadeau and did not have to register as a PAC. He said that the Commission's rules create a rebuttable presumption of coordination under certain circumstances; however, there is no evidence that this expenditure was coordinated with the candidate. Mr. Logan said with regard to Mr. Soucy being an agent of the campaign, there is no definition of agent in the statute and rules. In federal elections, the FEC's regulations say the individual must have actual authorization, either express or implied, from the principal. Mr. Logan said that was not the case here because Mr. Nadeau has not delegated any authority to Mr. Soucy to produce any communications on his behalf. Mr. Nadeau has run his own campaign and wrote all the checks from his campaign account.

Mr. Healy asked whether Mr. Soucy wrote any checks from the campaign account and Mr. Logan said he did not. Mr. Logan was not certain whether Mr. Soucy had signature authority on the account.

Mr. Logan summed up by saying there is sufficient evidence to rebut the presumption of coordination. The group financing the expenditure was an informal group of individuals who did not have any contact with the candidate regarding the expenditure. Mr. Soucy did not have an active role in the Nadeau campaign and was treasurer in name only as Mr. Nadeau ran his campaign and fulfilled all the duties of the treasurer by himself. While it may have been better practice for Mr. Soucy not to have been involved at all in the expenditure, there was no actual coordination between the candidate and the Citizens for Effective Government in making the expenditure.

Mr. Philip Soucy, joining the meeting via teleconference, said that he was treasurer for the campaign in name only. He said when Mr. Nadeau asked him to be treasurer, he told Mr. Soucy he would do all the work himself. Mr. Soucy also said he did not sign any checks on behalf of the campaign. It could be possible that Mr. Nadeau put his name on the campaign account but he never used the signature authority and never wrote any checks.

Mr. Healy asked if the candidate assigned him any other duties or authority to act on Mr. Nadeau's behalf. Mr. Soucy said the candidate did not but he did call the candidate whenever he receives any notices from the Commission to be sure the reports were being filed.

Mr. Healy asked Mr. Soucy who came up with the idea to send out the mailing. Mr. Soucy said it was his idea as well as two other people on the committee. Mr. Soucy said they did not discuss the mailer in any way with Mr. Nadeau.

Mr. Duchette asked who the two other people on the committee were. Mr. Soucy said they were Dana Saucier and Jim Majka. Mr. Duchette asked if they had any relationship with Mike Nadeau and Mr. Soucy said they did not.

Mr. McKee asked Mr. Soucy whether he understood that he did have some responsibilities when he agreed to be the treasurer for the campaign. Mr. Soucy said he did know and was very sorry that he put himself down as treasurer for the group. He explained when he agreed to be treasurer of the Citizens for Effective Government, it did not occur to him that there may be a conflict. He said that he should have known but

he was unaware at the time. In response to a question from Mr. McKee, he said he was not aware that he could not be the treasurer for both the candidate and for the Citizens for Effective Government. He was also not aware that he would have to file a report when he made the expenditure.

Mr. McKee asked Mr. Soucy whether he would agree that since he was the treasurer of the candidate's campaign and of the Citizens for Effective Government, he was in essence coordinating the expenditure with the campaign.

Mr. Soucy said he could be accused of that but he was not thinking that way when he made the expenditure.

Mr. McKee said that his understanding of Mr. Soucy's position is that he did not know he could not be the treasurer for the candidate and be a part of a separate group that was spending money to support the candidate. Mr. Soucy agreed that was his position.

Mr. Healy asked whether Mr. Soucy had any knowledge that the other individuals involved discussed the expenditure with Mr. Nadeau. Mr. Soucy said he did not.

Mr. Soucy explained, in response to Mr. McKee, that he had not been involved in politics since Gov. McKernan appointed him to the Board of Environmental Protection. He said was retired and had never run for office. He said he was involved in the Fort Kent Republican Committee since the primary and has helped two other candidates for the past 6 months. He said he also put up signs for Republican candidates who had asked for help in the past.

Mr. Wayne asked Mr. Soucy to describe how the money was raised for the expenditure. Mr. Soucy explained he was approached by three people who wanted to do something to help Mr. Nadeau's campaign and those people agreed to provide the money to pay for the mailing. Mr. Soucy said the three people were Renaldo Thibeault, a resident of Fort Kent, and Norman Nadeau and Kenneth Nadeau, who live in Connecticut but have summer homes in Fort Kent. They provided all the money for the expenditure.

Mr. Wayne asked how the cost for the mailing was determined. Mr. Soucy explained that he was told they would need \$1,500 for the printer to do the mailing. Once the money was raised, the purchase was made.

Mr. Wayne asked how Mr. Soucy received the money and what he did with it. Mr. Soucy explained that each individual paid him in cash and he put the cash in his safety deposit box and paid the printer with his credit card. Mr. Wayne asked if there was any paper record of that and Mr. Soucy said only his own record with his safety deposit box in his home.

Mr. Wayne asked if any of the contributors were related to the candidate and Mr. Soucy said he did not know.

Ms. Matheson asked whose name was on the credit card and Mr. Soucy said it was his name.

In response to Mr. McKee's question, Mr. Soucy said each contributor paid \$500 and will be refunded a portion of the balance (\$24.84) remaining after the expenditure was made. Mr. McKee asked how the \$1,500 amount was chosen. Mr. Soucy said he was told that he had to keep the expenditure under \$1,500 in order for the group not to be considered a PAC. Mr. McKee asked if he had received any funds from any other parties other than the three mentioned. Mr. Soucy said there were no other contributors. Mr. Soucy said he believed that Dana Saucier was the contact with the printer to set up the mailing. Mr. Saucier also determined the cost and designed the mailing with Jim Majka.

Mr. McKee asked if Mike Nadeau had any involvement with the design of the mailing and Mr. Soucy said he did not.

Mr. Duchette asked if Dana Saucier had a working relationship with the candidate and worked on his campaign. Mr. Soucy said that he was aware that Mr. Saucier tried to help but Mr. Nadeau was very independent and would not accept any help but he may have gotten some advice from Mr. Saucier.

Mr. McKee asked Mr. Soucy about the affidavit he signed stating there was no coordination with the candidate in making the expenditure and whether he understood what he was signing. Mr. Soucy said he did not know how to answer that question. As campaign treasurer for Mr. Nadeau, he said he was

accustomed to having Mike Nadeau do all the paperwork. He assumed that this form would be similar. He said he read it in a hurry and most likely missed the part about coordination. He said it did not occur to him that he should have checked it further.

Mr. McKee read the section from the affidavit which states that the expenditure was not made "in cooperation, consultation, or in concert with, or at the request or suggestion of, any candidate, authorized committee or agent of a candidate" and asked whether Mr. Soucy thought he was an agent at the time he signed the affidavit and had it notarized. Mr. Soucy replied that he and Dana Saucier went to the town office to get the affidavit notarized but he apparently did not know what he was signing at the time.

Mr. Wayne asked Mr. Soucy whether he could provide contact information for the other three individuals who contributed the funds for the expenditure and Mr. Soucy said he could do that.

Mr. Wayne asked if the cash was still in the safety deposit box and Mr. Soucy said it was not except for a balance of \$25 - \$30. Mr. Wayne asked why he did not pay the vendor with the cash. Mr. Soucy said he uses his credit card for all his purchases. Mr. Wayne asked if there was any receipt for the contributions. Mr. Soucy said he could contact the contributors to see if they would give him some form of documentation.

Mr. Wayne said that in the conversation they had on Saturday, Mr. Soucy told him that the contributions came from several people giving under \$100 and that Mr. Saucier and Mr. Majka may have put some of their own money in. Mr. Wayne said he asked Mr. Soucy on Saturday whether there were any other sources of money and Mr. Soucy told him that there were not. He said Mr. Soucy made no mention of the three people he named today. Mr. Wayne asked Mr. Soucy why he did not mention Mr. Thibeault and Norman and Kenneth Nadeau when Mr. Wayne spoke with him on Saturday.

Mr. Soucy said that he talked with Mr. Wayne before he spoke with his attorney and that he was apprehensive about being interrogated without an attorney.

Mr. McKee said that when Mr. Soucy was asked where the money came from, Mr. Soucy said the money came from individuals giving less than \$100. Mr. McKee asked Mr. Soucy if that was a truthful statement

at the time. Mr. Soucy said it was not truthful at the time. He said that it was his understanding that individuals giving smaller amounts do not need to be identified while those giving larger amounts do. If he said he had received smaller amounts, he was in error.

Mr. McKee said that did not have anything to do with whether he needed to talk with an attorney. Mr. McKee said that Mr. Wayne asked where the money came from and Mr. Soucy indicated that it came from people giving small amounts under \$100. Mr. McKee asked Mr. Soucy whether it was fair to say that Mr. Soucy was now saying that there were no individuals giving small amounts under \$100. Mr. Soucy said that was correct. He said there were no small contributions under \$100. In response to Mr. McKee's comment that what Mr. Soucy was now saying contradicted what he told Mr. Wayne on Saturday, Mr. Soucy said that what he told Mr. Wayne must have been in error.

Kate Knox said Mr. Soucy's testimony has raised more concerns and created inconsistencies. With regard to two of the contributors donating cash, she wondered how they could give cash if they are living out of state. She said Mr. Soucy has not denied his involvement on both sides of the fence. At this point, she said the question for the Commission may be who should be penalized and how much. The Commission may need more information to make that determination, which will require further investigation. In any event, this is a serious violation of the statute and she stressed the importance for the Commission to take immediate action before the election.

Mr. Healy asked Ms. Knox whether she believed Mr. Soucy was an agent for Mr. Nadeau and she said yes. He asked, based on the record so far, what Mr. Soucy's authority was. Ms. Knox said when someone signs up to be a treasurer there are certain duties that are required of the treasurer, including filing reports. She said whether Mr. Soucy had check signing authority or how much authority he had in the campaign is not particularly relevant. He was the treasurer of the campaign and the only other person listed in Mr. Nadeau's candidate registration. An analysis of how much of the treasurer's responsibilities he actually undertook or what parts of the campaign's operations he performed is not relevant. By nature of being the treasurer, he is an agent of the campaign.

Mr. Healy asked Ms. Knox if she believed Mr. Soucy was personally responsible for everything the campaign does or does not do. She said it was a complicated question. However, in this instance he is

responsible because the assumption is the candidate and the treasurer know about the campaign's expenses and operations. Regarding the matter at hand, Mr. Soucy is definitely responsible, because he is presumed to have the same knowledge as the candidate she said.

Ms. Knox said that Mr. Soucy claimed on the phone that he was only treasurer in name only and had no knowledge of expenditures. However, that argument does not hold in this case, she said, because a treasurer should not be allowed to claim he is not responsible.

Mr. McKee said when someone signs up to be a treasurer for a campaign they need to assume responsibility no matter how active they are. Ms. Knox agreed.

Mr. Healy said it is possible for someone to sign up as a treasurer and not perform the treasurer's duties and not be involved in the campaign at all. He said becoming a treasurer is a very important role and unless someone is willing to be an active treasurer, they should refrain from signing on as the treasurer. But that does not mean that an inactive treasurer who does nothing regarding campaign operations has all the knowledge he should have.

Ms. Knox explained that she does not believe that to be a fair analysis. She said someone cannot sign up to be a treasurer and then later claim no knowledge. If a treasurer makes the choice to be inactive, they do that at their own risk because they are ultimately responsible just by being on the form.

Mr. Duchette said that was the issue with Mr. Soucy. He claims he is not active in the campaign and so he believed he could be active in another group in supporting the candidate.

Ms. Knox said the statute and rules hold the treasurer in a position of responsibility and the treasurer can be found in violation if the campaign gets into trouble, based on their individual actions.

Mr. Logan said Ms. Knox argues that under the statute and rules, the treasurer must be considered an agent of the candidate. However, the commission's rule on coordination states that there is a rebuttable presumption of coordination if the treasurer is involved in expenditure by a third party. He said agents are limited by the scope of power designated by the principal.

Mr. Healy asked Mr. Logan whether the law required the treasurer to file reports. Mr. Logan said the candidate was allowed to file his own reports and many do. Mr. Logan said that treasurers' roles vary greatly and some candidates perform all duties assigned to the treasurer.

Ms. Amero said that sometimes a person who has good name recognition in the community and lends their name to the campaign because the treasurer's name is printed on all campaign communications.

Mr. Duchette said the issue really is not so much whether there was a violation but who is at fault.

With respect to the responsibilities of a candidate's treasurer, Ms. Gardiner said section 1016 of Title 21-A describes many of the statutory duties of a treasurer. In addition, she said section 1017 states that the treasurer shall file reports with the Commission. One possible line of inquiry for the Commission, if it decides to pursue it, is whether the Nadeau campaign was in compliance with these statutory provisions. She said the Commission could also address whether Mr. Soucy, as treasurer for the candidate, has violated any of these provisions. Furthermore, even though this may not be consistent with historical interpretation, Clean Election candidates are not allowed by statute to be their own treasurer for their campaigns. She said whether Mr. Nadeau should have functioned as his own treasurer and filed his own reports could be investigated further as well. She said another issue is whether the Citizens for Effective Government is a PAC and should have been registered. She said a determination of violation could be made today and the penalty phase deferred until after more fact finding has taken place.

Mr. McKee said if the Commission found a violation today it would be Mr. Soucy or the committee or both found in violation.

Ms. Gardiner said if the Commission found that Mr. Soucy was on both sides of the line in terms of coordination on the expenditure, there is the issue of whether he made a false statement by signing and submitting the affidavit. That violation would be specific to Mr. Soucy. In addition, if there is a finding of coordination, there is the issue of whether the candidate's committee accepted an impermissible in-kind contribution. Ms. Gardiner said that Ms. Knox was accurate as a matter of law that a treasurer can create some liability for the campaign by his actions.

Mr. McKee said that the two most likely defendants are Mr. Soucy and the candidate's committee. He said there are other aspects of this matter that may require further investigation at a later time as well.

Mr. Wayne said he thought the question is whether the candidate's committee or the candidate has received a contribution by the actions of the campaign treasurer in violation of the Maine Clean Election Act. Mr. Wayne said Mr. Soucy could be considered part of the political committee of the candidate as well as an agent. He said the candidate or candidate's committee could also be found in violation.

The Commissioners briefly discussed various ways in which the law of agency may apply in this instance.

Mr. Duchette asked what contact staff had with Mr. Nadeau. Mr. Wayne said that when he spoke to Mr. Nadeau he said he did not know about the mailing. Mr. Nadeau also spoke with Mr. Lavin on Friday night and told him that he did not know about the mailing or who the Citizens for Effective Government was.

Mr. Duchette asked whether Dana Saucier had been contacted and Mr. Wayne said he had not returned a phone call.

Mr. Wayne said there could be perception of unfairness if the candidate is being charged with accepting a contribution due to actions by his treasurer. However, he said that it was good policy that certain core people who are involved in a candidate's campaign should know that they cannot spend money to support the candidate in coordination with outside groups. He said in his view the candidate's committee accepted a contribution due to the treasurer's action even though the candidate did not know about it.

Mr. McKee said further investigation needs to be done to cover all the aspects of this matter. He said he would support a finding of violation against the committee but further investigation needs to take place in order to find whether Mr. Soucy was in violation by signing the affidavit stating there was no coordination with the candidate.

Mr. Healy asked if the Commission was under obligation to make a finding of violation today. Mr. McKee said because it was so close to the election, the Commission should make a determination about the expenditure today.

Mr. Duchette asked whether there was any doubt that a coordinated expenditure was made. He said it seemed obvious to him that there was coordination because the treasurer of the candidate's campaign and treasurer of the group spending money to support the candidate were the same individual.

Mr. Healy said he could agree that Mr. Soucy in his role of treasurer for the campaign and the committee violated the law. He said he was not comfortable, at this time, saying that Mr. Nadeau or his committee was in violation.

Mr. Duchette asked Mr. Healy whether he viewed Mr. Soucy as part of the candidate's committee or its agent. Mr. Healy said he agreed that Mr. Soucy was the treasurer of both which he should not have been. However, he questioned whether Mr. Nadeau did anything in violation of the statute since it appears Mr. Soucy acted on his own and there is no evidence of Mr. Nadeau's involvement. He would support a motion that further investigation take place.

Mr. McKee stated that although he would like Mr. Nadeau to be more responsive, he would give him the benefit of the doubt at this point and have staff do further investigation.

Mr. Duchette said he was unsure how Mr. Nadeau could shield himself from the actions of his committee but ultimately that may depend on what further investigation reveals. He said the candidate is responsible for the campaign and cautioned the Commission against holding other individuals responsible for actions and not the campaigns. He said in the past, the Commission has not done this and wondered how to find only Mr. Soucy in violation given his position on the candidate's committee. Mr. Duchette had questions about Dana Saucier's involvement with Mr. Nadeau. He wondered whether Mr. Soucy was put in this position of treasurer by the people around him. He said there needs to be more fact finding.

Mr. Healy suggested requiring the other parties be required to testify at a hearing in order to obtain more facts.

Mr. McKee said further factual findings would be necessary to determine who was in violation and said he was in favor of the hearing process Mr. Healy suggested.

Mr. Duchette moved that the Commission find that there was a coordinated expenditure under 21-A M.R.S.A. § 1015(5) as a result of the actions by and involvement of L. Phillip Soucy in both the Mike Nadeau campaign and the Citizens for Effective Government and to find that, as a result of the coordinated expenditure, there was a campaign contribution to the Mike Nadeau campaign which is not allowed under the Maine Clean Election Act. Mr. McKee seconded.

Motion passed (5-0).

Mr. McKee moved to have the staff commence an investigation regarding 1) the factual issues concerning the coordinated expenditure, 2) whether the Citizens for Effective Government should have registered as a political action committee, and 3) the issues raised by the sworn statement by L. Phillip Soucy that there was no coordination between the Mike Nadeau campaign and the Citizens for Effective Government regarding the expenditure for the communication. Mr. Duchette seconded.

Motion passed (5-0).

Mr. Duchette moved to adjourn and Ms. Matheson seconded the motion, which passed unanimously. The meeting adjourned at 10:15 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

November 5, 2012

By E-Mail and Regular Mail

Allen Michael Nadeau
545 Caribou Road
Fort Kent, ME 04743

L. Philip Soucy
31 Pinkham Avenue
Fort Kent, ME 04743

DETERMINATION

Dear Sirs:

The Maine Commission on Governmental Ethics and Election Practices held a special meeting today to consider a request for investigation filed by the Maine Democratic Party on November 2, 2012. The Commission was required to meet within two business days of receiving the request, pursuant to 21-A M.R.S.A. § 1002(1).

The Maine Democratic Party requested an investigation into the costs of a mailing made around November 1, 2012 in support of Mike Nadeau, a candidate for the Maine House of Representatives, District #1. The expenditure was disclosed in Independent Expenditure Report #205 filed with the Commission on November 2, 2012. In the report, the name of the person making the expenditure was listed as Citizens for Effective Government, L. Philip Soucy, Treasurer.

Mr. Soucy also served as the treasurer of the campaign committee authorized by Mr. Nadeau to promote his election to the Maine House of Representatives. In its request, the Maine Democratic Party contends that the expenditure was an illegal contribution to Mr. Nadeau's campaign, because Mr. Soucy cooperated in the expenditure and was an agent of the campaign.

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

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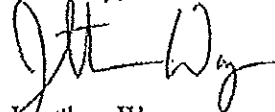
At the meeting, the Commission considered a presentation by William P. Logan, Esq., attorney for Mr. Soucy. Mr. Soucy provided information in response to questions from the Commission members and staff. The Commission also considered a presentation by Kate R. Knox, counsel for the Maine Democratic Party. In spite of receiving actual notice of the meeting by telephone and electronic communications, Mr. Nadeau chose not to participate in the meeting.

The Commissioners found unanimously that:

- (1) there was a coordinated expenditure under Title 21-A, section 1015(5) as a result of the involvement of treasurer L. Phillip Soucy in the Mike Nadeau campaign and the Citizens for Effective Government, and
- (2) as a result of the coordinated expenditure, there was a campaign contribution to the Mike Nadeau campaign which is not allowed under the Maine Clean Election Act.

In addition, the Commission directed its staff to commence an investigation regarding 1) the factual issues concerning the coordinated expenditure, 2) whether the Citizens for Effective Government should have registered as a political action committee, and 3) the issues raised by the sworn statement by L. Phillip Soucy that there was no coordination between the Mike Nadeau campaign and the Citizens for Effective Government regarding the expenditure for the communication.

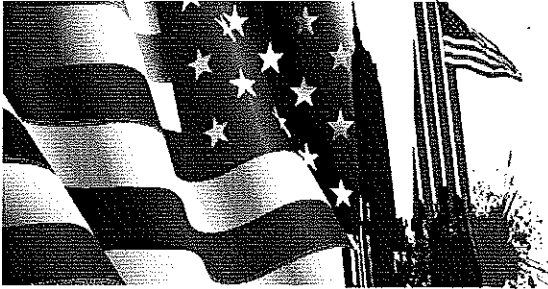
Sincerely,



Jonathan Wayne
Executive Director

cc: Kate R. Knox, Esq.
William P. Logan, Esq.
Hon. John L. Martin

Voting, continued



►Voting from page 13

Smith was "Noted for her political courage, integrity and independence." As a Republican, she spoke out openly against McCarthyism in the 1950s.

In 1964, she became a presidential nomination candidate at the Republican National Convention in San Francisco.

The Maine Almanac said Independents provide the swing vote in most Maine elections and helped elect two Independent governors: James B. Longley of Lewiston in 1974, and Angus S. King, Jr. of Brunswick in 1994.

According to a Capitol News Service article placed in the Bangor Daily News on Septem-

ber 7, 2008, the number of independent, or unenrolled, voters in Maine was larger in the last election year (2008) than either the Democratic or Republican numbers. Independents numbered 379,024; Democrats numbered 319,690; Republicans numbered 273,686; and Green-Independents numbered 29,160.

Whether Democrat, Republican, or one of the many Independents that drive election results in Maine, David Foster Wallace, an American novelist and 2012 Pulitzer Prize finalist, has some advice for voters: "In reality, there is no such thing as not voting: you either vote by voting, or you vote by staying home and tacitly doubling the value of some Diehard's vote."

Fiddlehead Focus says:

DO IT. VOTE!



Nadeau, Allen Michael

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04333-0135

To: William P. Logan, Esq., attorney for Philip Soucy
Timothy C. Woodcock, Esq., attorney for Rep. Michael Nadeau
James H. Majka
Dana Saucier
Katherine R. Knox, Esq., attorney for the Maine Democratic Party
Hon. John L. Martin

From: Jonathan Wayne, Executive Director

Cc: Walter F. McKee, Commission Chair
Assistant Attorney General Phyllis Gardiner, Commission Counsel

Date: December 20, 2012

NOTICE OF HEARING FOR JANUARY 17, 2013

Hearing Scheduled for January 17, 2013

The Maine Commission on Governmental Ethics and Election Practices has scheduled a hearing to investigate matters raised in a complaint by the Maine Democratic Party concerning spending by L. Philip Soucy and others under the name of Citizens for Effective Government to promote Michael Nadeau, candidate for Maine House of Representatives, District #1. The hearing will be held on Wednesday, January 17, 2013 at 10:00 a.m. at the Commission's office at 45 Memorial Circle, 2nd Floor, in Augusta, Maine. The hearing is being held pursuant to 21-A M.R.S. § 1003.

At a meeting on November 5, 2012, after hearing from Mr. Soucy, his counsel, counsel for the Maine Democratic Party, and Commission staff, the Commission made initial findings that:

- (1) a coordinated expenditure (i.e., one made "in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's

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FAX: (207) 287-6775

political committee or their agents") occurred under Title 21-A, section 1015(5) as a result of the involvement of treasurer L. Philip Soucy in the Mike Nadeau campaign and Citizens for Effective Government, and

- (2) the coordinated expenditure, constituted a campaign contribution to the Mike Nadeau campaign which is not allowed under the Maine Clean Election Act.

The Commission then directed its staff to continue an investigation into the factual issues concerning: 1) the expenditure by Citizens for Effective Government, 2) whether Citizens for Effective Government should have registered as a political action committee, and 3) the sworn statement by L. Philip Soucy that there was no coordination between the Nadeau campaign and Citizens for Effective Government regarding the expenditure for the communication.

The January 17, 2013 hearing will be conducted in accordance with Chapter 2 of the Commission's rules (available at www.maine.gov/ethics) and the Maine Administrative Procedure Act, 5 M.R.S. §§ 8001 et seq.

Issues to be addressed at the Hearing

The topics or issues to be addressed at the hearing will likely include:

- (1) whether the Michael Nadeau campaign should be found in violation of the Maine Clean Election Act for receiving a contribution in the form of a coordinated expenditure by the group known as Citizens for Effective Government
- (2) whether a penalty should be imposed on the candidate or the treasurer for receiving a contribution
- (3) whether Mr. Soucy made a material false statement in the affidavit filed with Independent Expenditure Report #205
- (4) whether Citizens for Effective Government made expenditures in excess of \$1,500 for the purpose of influencing the nomination or election of any candidate, thereby triggering an obligation to register and to file a campaign finance report as a political action committee
- (5) whether James Majka made an expenditure of \$420 for an advertisement in the Fiddlehead Focus newspaper independently of Michael Nadeau, his committee, and their agents.

Opportunity for Legal Argument

In addition to presenting evidence, there may be an opportunity for you to present legal argument at the January 17th meeting concerning whether any person committed a violation of law. The Commission may reach a final determination at the January 17th meeting, following the hearing, but it is also possible that the Commission will close the hearing and decide the matters at issue at a subsequent meeting. You will receive notice and have an opportunity to attend any such meeting.

Relevant Statutes

The following statutory provisions are relevant to the proceeding:

21-A M.R.S. § 1004-A(5)

21-A M.R.S. § 1015(5)

21-A M.R.S. §§ 1052(5)(4) & (5)

21-A M.R.S. § 1053

21-A M.R.S. § 1059

21-A M.R.S. § 1125(6)

21-A M.R.S. § 1127(1)

Applications to Intervene as a Party

Any person who wishes to intervene as a party to this proceeding should submit a letter to the Commission addressed to Walter F. McKee, Chair, at the above address no later than January 8, 2013.

Questions

If you have any questions concerning this notice, please call me at (207) 287-4179 or e-mail me at Jonathan.Wayne@maine.gov.